IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLN.NO.1210 OF 2007

Vijay Kaluram Kasurde ..Applicant
Vs.
State of Maharashtra ..Respondents

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Mr.J.Shekhar and Co. Advocate for Applicant
Mr.V.B.Konde-Deshmukh A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 06, 2007

P.C.

1. Heard the learned advocate for the applicant

and the learned A.P.P. for the State.

2. The applicant is seeking bail in Special Case No.5 of 2003 arising out of C.R.No.289 of 2003 of Swargate Police Station, Pune. The said case is mainly under Sections 302 & 120-B of IPC and under Sections 3(1) and 3(2) of M.C.O.C. of IPC.

3. It is the prosecution case that the applicant assaulted Mahendra Kewadia (deceased) by sickle. Mr.Shekhar, the learned advocate for the applicant has submitted that there is no material against the applicant save and except the confessional statement of co-accused Gajanan Marne. It is further submitted that the co-accused Deepak Misal has been released on bail by this Court, the case

of the applicant is similar to that of Deepak Misal and hence, the applicant is entitled to be enlarged on bail on the ground of parity. He further submitted that the material relating to recovery of blood stained clothes at the instance of the applicant, will have to be ignored as there are discrepancies in respect of said recovery. He lastly submitted that there are no criminal antecedents in respect of the present applicant. However, as far as this aspect is concerned, co-accused Manoj Sharma had preferred bail application before this Court being Cri.Application No. 4472 of 2004 whose case is similar to that of the present applicant. After considering all the aspects, his bail application came to be rejected.

4. The learned A.P.P. has submitted that in the present case, the trial is going on and five witnesses have already been examined and hence, the applicant may not be released on bail at this stage, as if the applicant is released on bail, the applicant may tamper with the witnesses and he may not be available for trial.

5. In the present case, the material against the applicant is confessional statement of co-accused

Gajanan Marne and recovery of blood stained clothes at his instance. It is the prosecution case that one Mahendra Kavedia came to be murdered and the applicant is one of the persons who assaulted him.

6. As far as co-accused Deepak Misal is concerned, he was not present at the time of the incident, whereas the prosecution case is that the present applicant was present at the time of the incident and that he assaulted Mahendra Kavedia. It is thus clear that the case of the applicant is not similar to that of the co-accused Deepak Misal. Hence, the present applicant cannot seek bail on the ground of parity.

7. Thereafter, Mr.Shekhar has submitted that even if the confessional statement of Gajanan Marne is taken into consideration, it does not show that the applicant assaulted Mahendra Kavedia. He has pointed out that in the confessional statement Gajanan Marne stated that on 25.8.2003 at about 12.30 p.m. Gajanan Marne surveyed the spot of incident with other accused persons. Mr.Shekhar submitted that the applicant was not present at that time. Gajanan Marne has stated that thereafter on the same day at about 6 p.m. he

himself and some accused persons including the applicant had gathered. He gave weapons to five accused persons including the applicant. The applicant was given a Koyata. Mr.Shekhar has further pointed out that thereafter Gajanan Marne has stated that those persons were informed where they were to stand near the scene of incident and the present applicant would wait with Gajanan Marne. The learned advocate for the applicant has specifically placed reliance on this sentence in the confessional statement of Gajanan Marne and submitted that this shows that the applicant had not gone to take part in the incident but the applicant and Gajanan were to wait nearby at the site and not to participate in the incident. I have carefully perused the statement of Gajanan Marne. Though Gajanan Marne has stated so in his confessional statement, it is pertinent to note that thereafter he has stated that at about 9 p.m. when Mahendra came out of the Gym, at that time, two of the accused assaulted him on the head with Koyata. Due to this, Mahendra Kavedia fell down. Thereafter, all of them assaulted Mahendra on the head with their respective weapons. This clearly indicates that not only Gajanan assaulted the deceased but the applicant who was present and

standing next to Gajanan also assaulted the deceased. Thus, from the confessional statement of Gajanan it is clear that the applicant also assaulted the deceased.

8. As far as recovery is concerned, the material on record shows that applicant made confessional statement to the police and thereafter pursuant to the said voluntary statement under Section 27 of the Evidence Act he led the police to the place and there from the grass, T-shirt and jeans came to be recovered at his instance. The applicant had himself taken out T-shirt and jeans from the plastic bag, both the articles bore blood stains. C.A. report shows that both T-shirt and jeans had blood of 'A' group i.e. the group of the deceased. In respect of the contention that there are lacunae in the recovery and hence, the material relating to recovery cannot be relied upon, in my view, that is an aspect which can be gone into only after all the evidence is led.

9. Mr.Shekhar, the learned advocate for the applicant has further submitted that as far as recovery is concerned, pancha has been examined and he has turned hostile. Hence, the only material

which remains against the applicant is confessional statement of co-accused Gajanan Marne. As far as this aspect is concerned, it is open to the prosecution to examine the second pancha and lead evidence on the aspect of recovery. Hence, that cannot be a ground to grant bail to the applicant.

10. In view of the availability of the material it is very difficult to record satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the offence alleged against him, hence application is rejected.

11. However, looking to the fact that applicant is in custody since long time, the trial is expedited. In case, the trial is not concluded by end of October, 2007, liberty is granted to the applicant to prefer a fresh application for bail. If such an application is preferred, the learned Sessions Judge shall decide the same on merits without being influenced by any observations made in this order.

12. Application is disposed of.

[Smt. V.K.Tahilramani, J.]